

CAROLYN J. McCUTCHIN

IBLA 84-761

Decided March 29, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W 85829.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a lease offer for such lands must be rejected. The offeror has no vested rights to issuance of a lease.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Where BLM rejects a noncompetitive oil and gas lease offer on the grounds the parcel sought to be leased lies within a known geologic structure, in the absence of supporting geological data in the record on appeal, a challenge to the KGS determination requires the decision be set aside as unsupported in fact.

APPEARANCES: Carolyn J. McCutchin, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Carolyn J. McCutchin has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 19, 1984, rejecting noncompetitive oil and gas lease offer W 85829 for parcel WY 519 for which she was the first-priority applicant in the May 1983 simultaneous oil and gas

lease drawing. ^{1/} BLM's rejection is based on a memorandum from the Rock Springs District Office, BLM, dated June 5, 1984, stating that the lands in appellant's offer are entirely within the South Baxter Basin Known Geological Structure (KGS) effective May 2, 1984. The decision stated that an offer for lands determined to be within a KGS of a producing oil and gas field prior to issuance of a lease shall be rejected, citing 43 CFR 3112.5-2(b). Such lands may only be leased by competitive bidding. 43 CFR 3120.1(a).

By notice dated August 30, 1983, BLM transmitted to appellant the lease offer, required stipulations, and request for first year's rental. On September 22, 1983, the signed offer, stipulations, and rental were filed with BLM. On October 27, 1983, the Secretary issued an order temporarily suspending the issuance of noncompetitive oil and gas leases not processed before October 12, 1983, until it was determined that the lands involved were not located within a KGS. See 48 FR 49703 (Oct. 27, 1983).

Appellant challenges BLM's KGS determination, stating that the information available to her does not show any oil and gas structures in the vicinity of the subject tract.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands within the KGS of a producing oil and gas field "shall be leased * * * by competitive bidding." Where lands embraced in a noncompetitive oil and gas lease offer are designated as within a KGS prior to issuance of the lease, the offer must be rejected. R. C. Altrogge, 78 IBLA 24 (1983). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDade v. Morton, 353 F. Supp. 1006 (D.C. Cir. 1973), aff'd, 494 F. 2d 1156 (D.C. Cir. 1974).

[2] The Board has consistently held that where a KGS determination is challenged, the record on appeal must contain sufficient information to permit an informed decision on the issue presented. Carolyn J. McCutchin, 84 IBLA 368 (1985); Thomas Connell, 82 IBLA 132 (1984). In Connell the Board said,

[W]here on appeal from rejection of a noncompetitive oil and gas lease offer, appellant submits evidence tending to contradict a determination that land embraced in the lease offer is within a KGS and there is nothing in the record to support the decision except the conclusory statement that the land is in a KGS, the decision may appropriately be set aside and the case remanded to substantiate the basis for the KGS determination in light of the information tendered by appellant.

^{1/} The decision states that the 40-acre parcel is sec. 14, SW 1/4 SE 1/4, T. 19 N., R. 104 W., sixth principal meridian, Sweetwater County, Wyoming.

Thomas Connell, supra at 133. Here, appellant contends that there is no nearby oil or gas production and that her lease cannot, therefore, be properly included within any KGS. The BLM case file does not contain any basis upon which to sustain the challenged KGS determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.

